

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**FILED
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8/28/2014 1:41 pm

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

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TRUSTEES OF THE EMPIRE STATE
CARPENTERS WELFARE, PENSION
ANNUITY, APPRENTICESHIP,
CHARITABLE TRUST, LABOR
MANAGEMENT COOPERATION AND
SCHOLARSHIP FUNDS,

ORDER
12-cv-1530 (ADS)(SIL)

Plaintiff,

-against-

ECI CONTRACTING, INC.

Defendant.
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APPEARANCES:

Selvin & Hart, P.C.

Attorneys for the Plaintiff

1625 Massachusetts Ave, N.W.

Suite 450

Washington, DC 20036

By: Owen M. Rumelt, Esq., Of Counsel

Virginia & Ambinder LLP

Attorneys for the Plaintiff

40 Broad Street, 7th Floor

New York, NY 10004

By: Charles R. Virginia, Esq.
Richard B. Epstein, Esq., Of counsel

Mastropietro & Associates LLC

Attorneys for the Defendant

The Chancery

190 Willis Avenue

Mineola, New York 11501

By: Manny A. Frade, Esq., Of Counsel

SPATT, District Judge.

The Plaintiff commenced this action on or about March 28, 2012, asserting claims for damages pursuant to Section 502 of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1132, and Section 301 of the Labor Management Relations Act of 1948 (“LMRA”), 29 U.S.C. § 185. The Clerk of the Court having noted the default of the Defendant ECI Contracting, Inc. on March 4, 2013, and the Plaintiff having moved for a default judgment against the Defendant on March 21, 2013, the Court referred this matter to United States Magistrate Judge E. Thomas Boyle for a recommendation as to whether the motion for a default judgment should be granted, and if so, whether damages should be awarded, including reasonable attorney’s fees and costs.

On July 24, 2013, the case was reassigned from Judge Boyle to United States Magistrate Judge William D. Wall. On June 3, 2014, Judge Wall issued a thorough Report and Recommendation that the motion be granted and that Plaintiff Funds be awarded delinquent contributions of \$78,456.72, accrued interest as of May 13, 2013 in the amount of \$53,938.07, audit costs of \$7,927.50, and liquidated damages in the amount of \$15,691.34, for a total of \$156,013.63, plus daily interest from May 13, 2013 through the day of entry of judgment in the amount of \$32.90. Judge Wall further recommended an award of \$7,198.50 in attorney’s fees and costs.

In reviewing a report and recommendation, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. §636(b)(1)(C). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)

(citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Wall's Report and finds it to be persuasive and without any legal or factual errors. There being no objection to Judge Wall's Report, it is hereby

ORDERED, that Judge Wall's Report and Recommendation is adopted in its entirety. The motion for a default judgment and an award of damages is granted and the Plaintiff is awarded delinquent contributions of \$78,456.72; accrued interest as of May 13, 2013 in the amount of \$53,938.07; audit costs of \$7,927.50; liquidated damages in the amount of \$15,691.34, for a total of \$156,013.63, plus daily interest from May 13, 2013 through the day of entry of judgment in the amount of \$32.90; and \$7,198.50 in attorney's fees and costs; and it is further

ORDERED, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
August 28, 2014

Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge